# APPENDIX A

## IN THE SUPREME COURT OF TENNESSEE AT NASHVILLE

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

v.

MARGARET HUDSON

**Chancery Court for Davidson County**
**No. 98-406I**

**No. M2002-02847-SC-R11-CV**

**FILED JUN 21 2004**

## ORDER

Upon consideration of the application for permission to appeal of Margaret Hudson and the record before us, the application is denied.

PER CURIAM

## APPENDIX B

## IN THE COURT OF APPEALS OF TENNESSEE
## AT NASHVILLE

November 6, 2003 Session

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METROPOLITAN GOVERNMENT OF NASHVILLE
AND DAVIDSON COUNTY

v.

MARGARET HUDSON

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**Chancery Court for Davidson County**
**No. 98-406-I**

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**No. M2002-02847-COA-R3-CV**

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**FILED DEC 30 2003**

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## JUDGMENT

This cause came on to be regularly heard and considered by this Court, and for the reasons stated in the Opinion of this Court, of even date, it is Ordered:

1. The judgment of the trial court is affirmed and this cause remanded for further proceedings consistent with this opinion.

2. Costs of this appeal are taxed against the appellant, Margaret Hudson, and her surety, for which execution may issue if necessary.

**PER CURIAM**

**IN THE COURT OF APPEALS OF TENNESSEE**
**AT NASHVILLE**
November 6, 2003 Session

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

v.

MARGARET HUDSON

**Direct Appeal from the Chancery Court**
**for Davidson County**
**No. 98-406I**
**Irvin H. Kilcrease, Jr., Chancellor**

**No. M2002-02847-COA-R3-CV**

**FILED DEC 30 2003**

This case involves an appeal from the trial court's grant of Appellee's motion for summary judgment. Appellee filed suit seeking to enjoin Appellant to remove vinyl siding that she had installed on her house in violation of a historic zoning ordinance. Appellant counter-complained alleging that the ordinance was void and unenforceable on grounds that the ordinance was unconstitutional and never properly adopted. Appellee subsequently moved for summary judgment which the trial court granted. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right;**
**Judgment of the Chancery Court Affirmed;**
**and Remanded**

DAVID R. FARMER, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and WILLIAM CAIN, J., joined.

Joseph H. Johnston and Marbut Glenn Gaston, Jr., Nashville, Tennessee, for the Appellant, Margaret Hudson.

Lora A. Barkenbus, Metropolitan Attorney, Nashville, Tennessee, for the Appellee, Metropolitan Government of Nashville and Davidson County.

## OPINION

In 1982, Defendant/Appellant, Margaret Hudson (Mrs. Hudson) bought a house located on White Avenue (White Ave. property) in Nashville, Tennessee, as an investment property. During all times pertinent to this case, Mrs. Hudson lived in another Nashville home (Lawrence Ave. property) located some fifteen blocks away from the White Ave. property. On November 19, 1985, the Metropolitan Council passed a bill creating the Woodland-in-Waverly Historic District that would include the White Ave. property. That bill was signed by the Mayor of Nashville on November 25, 1985, and by the language of the ordinance became effective five days after its passage, November 30, 1985. On November 25, 1985, the Metropolitan Historic Zoning Commission (MHZC) adopted the Woodland-in-Waverly Historic Zoning Design Guidelines. These guidelines prohibited the installation of vinyl siding on houses located within the district.

In late May or early June of 1996, Mrs. Hudson hired a contractor, Southern Aluminum Company, to install vinyl siding on the White Ave. property.[1] On February 10, 1998, the Metropolitan Government of Nashville and Davidson County (Metro) filed suit against Mrs. Hudson seeking to enjoin her to

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[1] The Metropolitan Government of Nashville and Davidson County originally brought actions against Mrs. Hudson and Southern Aluminum Company seeking to enjoin both from violating the zoning ordinance. Souther Aluminum Company was dismissed from the current action by summary judgment order entered by the trial court.

remove the vinyl siding. On December 13, 2000, Mrs. Hudson answered and counter-complained arguing that the guidelines were void because they had never been adopted by Metro, were unconstitutionally vague, that enforcement amounted to a taking without compensation, and violated her right to due process under the Fourteenth Amendment because she never received notice of their adoption.

Metro filed a motion for summary judgment. Accompanying the motion was the affidavit of the director for the MHZC. In the affidavit, the director recounted the forms of notice given to residents of the Woodland-in-Waverly district: In 1983, the Metropolitan Historical Commission had its first public meeting in the Woodland-in-Waverly neighborhood to discuss possible historic zoning status. On May 28, 1985, the MHZC mailed an information packet on the historic guidelines including draft guidelines to all of the proposed district's residents and announced a public hearing set for June 13, 1985, to discuss the designation and review guidelines. In addition to the June MHZC public hearing, the Davidson County Metropolitan Council held a public hearing on November 5, 1985. On November 25, 1985, the guidelines for the historic district were adopted at a public meeting of the MHZC. Upon adoption, notice were distributed around the neighborhood informing the residents of the historic designation and procedures for applying for a certificate of appropriateness before changing the exterior of any structure. Notice of the newly formed zoning district ran in the Tennessean newspaper. In another affidavit filed with the court, Mrs. Hudson stated that she had never been informed of the historical designation. Mrs. Hudson further stated that the White Ave. property mailing address on filed with Metro's Property Assessor and Trustee was her Lawrence Ave. property address, where she was currently residing, as opposed to the

property's actual address, which was attached to the mailing list of the original notices.

The trial court granted Metro's motion for summary judgment. The trial court specifically found that the historic zoning guidelines were properly adopted and enforceable, that Mrs. Hudson's house was located within the historic district, that the guidelines prohibited the installation of vinyl siding, and that Mrs. Hudson's installation of vinyl siding, after the guidelines were adopted, violated the zoning ordinance. In an amended order, the trial court dismissed Mrs. Hudson's claims contained in the counter-complaint, finding them not meritorious.

***Issues Presented***

Mrs. Hudson raises the following issues, as we perceive them, for review by this Court:

1. Whether failure to mail notices of public hearing on the establishment of a historic district, and on the subsequent adoption of review guidelines to Mrs. Hudson's correct address, as required by Article XV of the Metropolitan Zoning Code, constitutes a denial of due process, guaranteed under the Fourteenth Amendment of the United States Constitution and Article I, Section 8 of the Tennessee Constitution.

2. Whether the Historic Zoning Enabling Statutes, which authorize the MHZC to adopt review guidelines of the appropriateness of improvements to property within a historic district prior to the establishment of the historic district require that the review guidelines be adopted prior to the legislative establishment of the historic district.

### *Standard of Review*

This Court must decide whether it was error for the trial court to award summary judgment to Metro. Summary judgment should be awarded when the moving party can demonstrate that there are no genuine issues regarding material facts and that it is entitled to judgment as a matter of law. Tenn. R. Civ. P. 56.04; *McCarley v. W. Quality Food Serv.*, 960 S.W. 2d 585, 588 (Tenn. 1998); *Byrd v. Hall*, 847 S.W. 2d 208, 214 (Tenn. 1993). Mere assertions that the non-moving party has no evidence does not suffice to entitle the moving party to summary judgment. *McCarley*, 960 S.W. 2d at 588. The moving party must either conclusively demonstrate an affirmative defense or affirmatively negate an element which is essential to the non-moving party's claim. *Id.* If the moving party can demonstrate that the non-moving party will not be able to carry its burden of proof at trial on an essential element, summary judgment is appropriate. *Id.*

This Court reviews an award of summary judgment *de novo*, with no presumption of correctness afforded to the trial court. *Guy v. Mut. of Omaha Ins. Co.*, 79 S.W. 3d 528, 534 (Tenn. 2002). In determining whether to award summary judgment, we must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in favor of the non-moving party. *Staples v. CBL & Assoc.*, 15 S.W. 3d 83, 89 (Tenn. 2000). Summary judgment should be awarded only when a reasonable person could reach only one conclusion based on the facts and inferences drawn from those facts. *Id.* If there is any doubt about whether a genuine issue of material fact exists, summary judgment should not be awarded. *McCarley*, 960 S.W. 2d at 588.

### *Notice*

Mrs. Hudson argues that the MHZC's forms of notice did not comply with the Metropolitan Code of Nashville and

Davidson County (Metropolitan Code) and, as a result, constitute a denial of due process under the Tennessee and United States Constitutions. Tennessee Code Annotated § 13-7-406 (1999) addresses the notice and public hearing required for adoption of historic zoning review guidelines. It provides, in pertinent part:

> [p]rior to the establishment of any historic district or zone, the historic zoning commission . . . shall adopt for each such proposed district or zone a set of review guidelines . . . . Reasonable public notice and opportunity for public comment, by public hearing or otherwise, shall be required before the historic zoning commission or the regional historic zoning commission adopts any such review guidelines.

The Metropolitan Code has further defined "reasonable public notice" in Article XV. *See* Code of the Metropolitan Government of Nashville and Davidson County, Tennessee, Article XV (1991). For the notice requirements of Article XV to apply, some other provision of the Metropolitan Code must require a public hearing. *Id.* § 17.40.700. Section 17.40.410(B) of Article IX, Historic Zoning Commission, requires that "[t]he historic zoning commission shall adopt design guidelines for each historic overlay district . . . . A *public hearing* following the applicable public notice requirements of Article XV of this chapter shall precede the adoption of all design review guidelines by the historic zoning commission." *Id.* § 17.40.410(B) (emphasis added). Consequently, Article XV requires that:

> [17.40.710 Notice by newspaper:] [n]o public hearing shall be conducted unless notice has been given in one or more daily newspapers of general circulation in Davidson County no less than twenty-one days nor more than thirty days prior to the public hearing.

> [17.40.720 Notice by mail:] [n]o public hearing shall be conducted unless, at least twenty-one days prior to the public hearing, the owner(s) of the subject property and all other property owners within the distances prescribed by this article have been given notice by mail of the time, date and place of the public hearing.

In this case, the only evidence in the record of notice by newspaper was the publication of the adoption of the historical zoning designation rather that the required newspaper notice of a public hearing for comment on review guidelines. As a result, MHZC failed to meet the notice by newspaper requirement of § 17.40.710. Further, the affidavit of the director for the MHZC stated that notices of public hearing, scheduled for June 13, 1985, accompanied by draft review guidelines were mailed on May 28, 1985. Accordingly, MHZC's notice by mail does not meet the twenty-one day notice requirement of § 17.40.720.

However, "'after long public acquiescence in the substance of an ordinance, public policy does not permit . . . an attack on the validity of the ordinance because of procedural irregularities.'" *Hutcherson v. Criner*, 11 S.W. 3d 126, 134 (Tenn. Ct. App. 1999) (quoting *Trainor v. City of Wheat Ridge*, 697 p.2d 37, 39 (Colo. Ct. App. 1984)) (citing *Edel v. Filer Township*, 211 N.W. 2d 547 (Mich. Ct. App. 1973); *Taylor v. Schlemmer*, 183 S.W. 2d 913 (Mo. 1944); *Struyk v. Samuel Braen's Sons*, 85 A. 2d 279 (N.J. Super. Ct. App. Div. 1951)); *see also* 83 Am. Jur. 2d *Zoning and Planning* § 511 (2003) (stating that a protracted delay may prevent a party from challenging a legislative body's failure to comply with the notice requirements of an enabling statute); *Schlemmer*, 183 S.W. 2d at 915-16 (holding that the city's failure to comply with the notice requirements of its zoning ordinance's enabling act was a procedural defect which could not be challenged twelve years after its adoption). In *Criner*, this Court used ten

years as the benchmark duration to immunize a zoning ordinance from procedural attack. *Criner*, 11 S.W. 3d at 135. The rationale behind such immunity is the extensive public reliance on the zoning ordinance resulting from a long duration of acquiescence. *Id.* In this case, the historic designation and review guidelines were adopted in 1985 and were first challenged by Mrs. Hudson in December of 2000 in her counter complaint. This delay, well over ten years, prevents Mrs. Hudson from challenging the MHZC's failure to comply with the procedural notice requirements enumerated in the Metropolitan Code. Accordingly, the trial court's grant of Metro's motion for summary judgment dismissing Mrs. Hudson's constitutional claims is affirmed.

***Timing of Adoption***

Mrs. Hudson next argues that the historic designation of the Woodland-in-Waverly district and its applicable review guidelines are not enforceable because their adoption did not comply with Tenn. Code Ann. § 13-7-406 (1999). This section provides that "[p]rior to the establishment of any historic district or zone, the historic zoning commission . . . also shall adopt for each such proposed district or zone a set of review guidelines . . . ." Assuming *arguendo* that Metro did not comply with the statute in its adoption of the guidelines and designation, Mrs. Hudson's delay in challenging the procedural defects of the zoning ordnance's adoption immunize it from attack. *Criner*, 11 S.W. 3d at 134-35. Accordingly, the trial court's grant of Metro's motion for summary judgment on the validity of the historic zoning ordinance's adoption is affirmed.

***Conclusion***

In light of the foregoing, we affirm the trial court's grant of Metro's motion for summery judgment and dismissal of Mrs. Hudson's constitutional counterclaims. Costs of this appeal are

taxed to the Appellant, Margaret Hudson, and her surety, for which execution may issue is necessary.

/s/ David R. Farmer
DAVID R. FARMER, JUDGE

## APPENDIX C

## IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY , TENNESSEE,
Plaintiff,

MARGARET HUDSON
Defendant.

**No. 98-406-I**
**Notice of Entry Requested**

RECEIVED SEP 12 2002
Dav. Co Chancery Court

FILED 2002 SEP18 AM 11:24
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

### *ORDER*

The Plaintiff's motion for summary judgment was heard on September 6, 2002. After hearing the arguments of counsel and reviewing the record, the Court finds the following:

1. The historic zoning overlay and design guidelines for the "Woodlands in Waverly" Historic District that were adopted in 1985 were properly adopted and are valid and enforceable.

2. Defendant's house is located in this historic district.

3. The design guidelines prohibit the installation of vinyl siding on houses within the district.

4. The design guidelines were in place when Defendant installed the vinyl siding on her house. Defendant's use of vinyl siding violates these guidelines. The Court must enforce the ordinance, therefore Plaintiff's motion for summary judgment is supported by the record, is meritorious and is granted.

It is therefore ORDERED, ADJUDGED and DECREED that plaintiff's motion for summary judgment is GRANTED.

It is further ORDERED, ADJUDGED and DECREED that an injunction shall be issued requiring that the vinyl siding be removed from the defendant's house and will go into effect thirty days from date of entry of this Order. *[Handwritten note: Costs taxed to the defendant. IHK Jr.]*

ENTERED on this 18 day of September, 2002.

/s/ Irvin H. Kilcrease, Jr.
IRVIN H. KILCREASE
CHANCELLOR

APPROVED FOR ENTRY:

THE DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
KARL F. DEAN, #10419
DIRECTOR OF LAW

/s/ Margaret O. Darby
MARGARET O. DARBY, #20701
Metropolitan Attorney
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/s/ Lora Barkenbus

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[Certification of Service Omitted in Printing]

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE**

METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY , TENNESSEE,

Plaintiff,

v.

MARGARET HUDSON

Defendant.

**No. 98-406-I**
**Notice of Entry Requested**

RECEIVED NOV 01 2002
Dav. Co Chancery Court

FILED 2002 NOV –7 AM 11:23
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

***AMENDED ORDER***

This Order reflects the ruling made on November 1, 2002 after hearing Defendant's Motion to Alter or Amend the September 18, 2002 Order entered in this matter.

The Plaintiff's motion for summary judgment was heard on September 6, 2002. After hearing the arguments of counsel and reviewing the record, the Court finds the following:

1. The historic zoning overlay and design guidelines for the "Woodlands in Waverly" Historic District that were adopted in 1985 were properly adopted and are valid and enforceable. The Court grants the Defendant's Motion to Amend Complaint, has considered the claims of constitutional

violations, including the Section 1983 counterclaim, and finds that those claims are not meritorious and shall be dismissed.

2. Defendant's house is located in this historic district.

3. The design guidelines prohibit the installation of vinyl siding on houses within the district.

4. The design guidelines were in place when Defendant installed the vinyl siding on her house. Defendant's use of vinyl siding violates these guidelines. The Court must enforce the ordinance, therefore, Plaintiff's motion for summary judgment is supported by the record, is meritorious and is granted.

It is therefore ORDERED, ADJUDGED and DECREED that plaintiff's motion for summary judgment is GRANTED and defendant's counterclaims as amended are DISMISSED.

It is further ORDERED, ADJUDGED and DECREED that an injunction shall be issued requiring that the vinyl siding be removed from the defendant's house and will go into effect thirty days from date of entry of this Order.

ENTERED on this 7th day of November, 2002.

/s/ Irvin H. Kilcrease, Jr.
IRVIN H. KILCREASE
CHANCELLOR

APPROVED FOR ENTRY:

**BY PLAINTIFF:**

THE DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
KARL F. DEAN, #10419
DIRECTOR OF LAW

/s/ Margaret O. Darby

MARGARET O. DARBY, #20701
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/s/ Lora Barkenbus

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**BY DEFENDANT:**

/s/ Marbut Glenn Gaston, Jr. by JHJ

MARBUT GLENN GASTON, JR. #003143
Attorney at Law
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615) 385-2804

/s/ Joseph H. Johnston

JOSEPH H. JOHNSTON, #4706
Attorney at Law
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[Certification of Service Omitted in Printing]

## APPENDIX D

## IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE,
Plaintiff,

vs.

MARGARET HUDSON AND HAROLD CAPITEL, D/B/A SOUTHERN ALUMINUM COMPANY,
Defendants,

**No. 98-406-I**

FILED 2002 SEP –3 PM 2:28
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

***Defendant's Response to Plaintiff's Statement of Undisputed Facts In Opposition to Plaintiff's Motion for Summery Judgment***

Comes now defendant, Margaret Hudson, and pursuant to Rule 56 of the Tennessee Rules of Civil Procedure, hereby responds to the following facts, to which she contends are in dispute.

1. Historic zoning overlay and design guidelines were adopted for the Woodland in Waverly Historic District in 1985. Affidavit of Tom Walker. Affidavit of Ann Roberts.

**RESPONSE:** Admitted that the Woodland-in-Waverly Historic Zoning District Guidelines were adopted by the Metropolitan Historic Zoning Commission on

November 25, 1985. However, because these design-guidelines were not adopted *prior* to the creation of this particular Historic Zoning District by the Metropolitan Council, as required by T.C.A. Section 13-7-406, these design guidelines are ***void ab initio***. Council Bill No. 085-1021 passed final reading by the Metropolitan Council on *November 19, 1985.* **[See Affidavit of Margaret Hudson and Exhibits thereto, as well as Exhibits attached to Affidavit of Ann Roberts.]**

2. Margaret Hudson is the owner of the property located at 2208 White Avenue, Nashville, Tennessee. Answer Paragraph 2.

**RESPONSE:** Admitted that Margaret Hudson is the owner of 2208 White Avenue, Nashville, Tennessee; however, she resides at 1014 Lawrence Avenue, Nashville, Tennessee 37204. This is the address that is listed on the Metropolitan Government taxation records for the said 2208 White Avenue. Margaret Hudson has never resided at 2208 White Avenue. **[See Affidavit of Margaret Hudson, paragraphs 1 and 8.]**

3. Mrs. Hudson's property is within the boundaries of the Historic Zoning Overlay of Woodland in Waverly District and the dwelling thereon is a historic structure in accordance with the Woodland in Waverly Design Guidelines. Affidavit of Tim Walker.

**RESPONSE:** Admitted that Mrs. Hudson's property is within the boundaries of the Historic Zoning Overlay of Woodland-in-Waverly Historic District, however, the Woodland-in-Waverly Design Guidelines are ***void ab initio*** because they were not adopted by the Metropolitan Historic Zoning Commission until November 25, 1985, six days *after* the Metropolitan Council passed Council Bill No. 085-1021 on final reading on November

19, 1985, and *not prior* to the creation of this particular Historic Zoning District as required by T.C.A. Section 17-7-406. **[See Affidavit of Margaret Hudson and Exhibits thereto, as well as Exhibits to Affidavit of Ann Roberts.]**

4. Margaret Hudson signed a petition directed to the Metropolitan Historic Zoning Commission and the Metropolitan Planning Commission to recommend to the Mayor and the Metropolitan Council to enact historic preservation zoning for the Ridley-Benton neighborhood. Affidavit of Ann Robert.

**RESPONSE:** Denied. Margaret Hudson did not sign the described petition; neither did her late husband, James T. Hudson sign said petition. The signature of "M/M J.T. Hudson" on this petition is a forgery. **[See Affidavit of Margaret Hudson, paragraph 6 and collective Exhibit "C" attached thereto.]**

5. The Historic Zoning Guidelines for the Woodland in Waverly District, specifically Section II.B. (c) (1) and (4) at page 22 prohibit the installation of vinyl siding on historic structures within the district. Affidavit of Time Walker.

**RESPONSE:** This document speaks for itself; however, the Historic Zoning Guidelines for the Woodland-in-Waverly District are ***void ab initio*** because they were not adopted prior to the creation of this particular Historic Zoning District as required by T.C.A. Section 13-7-406. Draft Design Guidelines circulated in 1985 did not contain a specific prohibition against vinyl siding (or other sidings) that was included in the final Design Guidelines adopted by the MHZC on November 25, 1985. **[See Correspondence to Don Jones from Ann Roberts dated September 10, 1993, with attachments**

**thereto all of which are attached to the Affidavit of Ann Roberts.]**

6. Margaret Hudson did not appeal the April 16, 1997 decision of the MHZC to deny a certificate of appropriateness for the vinyl siding. Affidavit of Tim Walker

**RESPONSE:** Admitted that Margaret Hudson did not appeal the April 16, 1997 decision of the MHZC to deny a Certificate of Appropriateness for vinyl siding; however, this administrative decision is voidable because the Historic Zoning Guidelines for the Woodland-in-Waverly District are ***void ab initio*** since they were not adopted prior to the creation of this particular Historic Zoning District as required by T.C.A. Section 13-7-406. Any action taken pursuant to such guidelines is illegal, ultra vires, and in violation of procedural due process guaranteed under the 14th Amendment to the United States Constitution.

Respectfully submitted,

/s/ Marbut Glenn Gaston, Jr.
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Attorneys for Defendant Margaret Hudson

[Certification of Service Omitted in Printing]

## APPENDIX E

## IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE,
Plaintiff,

vs.

MARGARET HUDSON AND HAROLD CAPITEL, D/B/A SOUTHERN ALUMINUM COMPANY,
Defendants,

**No. 98-406-I**

FILED 2002 SEP –3 PM 2:29
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

***Defendant's Statement of Additional Disputed and Undisputed Facts In Opposition to Motion for Summery Judgment***

Comes now Defendant, Margaret Hudson, and pursuant to Rule 56 of the Tennessee Rules of Civil Procedure, hereby submits the following Statement of Additional Disputed and Undisputed Facts in Opposition to Plaintiff's Motion for Summary Judgment.

1. The installation of vinyl siding on the house at 2208 White Avenue, Nashville, Tennessee was done in late May or early June of 1996. The work was performed in broad daylight, on weekdays and was thus open and notorious. No complaint about the vinyl siding was ever filed by residents of the Woodland-in-Waverly Historic Zoning District [W-I-W HZD] with the Metropolitan Codes

Department [MCD] or the Metropolitan Historic Zoning Commission [MHZC]. No stop-work Orders were issued by any Metropolitan Agency. The project was completed at a cost of some $7,000.00. **[Affidavit of Margaret Hudson.]**

RESPONSE:

2. Seven months or more after the installation of the vinyl siding on 2208 White Avenue was completed and paid for, Margaret Hudson received Notice that she was in violation of the Historic Zoning District Design Guidelines [HZDDG]. There has been no explanation by the Metropolitan Government to justify this delay that has resulted in an economic hardship to Margaret Hudson. **[Affidavit of Margaret Hudson.]**

RESPONSE:

3. In the Spring of 1998, suit was filed by Plaintiff, Metropolitan Government, to enjoin Margaret Hudson to remove the vinyl siding installed in May/June 1996 and restore her house to its original condition prior to the installation of said siding. **[Complaint, page 3]** More than four years has lapsed since the filing of this lawsuit against Margaret Hudson, which has been subject to involuntary dismissal for lack of prosecution on several occasions. **[Court's Docket-Sheet]** Margaret Hudson has suffered further economic loss by the delay in prosecuting this case because of various costs of compliance due to inflation. **[Affidavit of Margaret Hudson.]**

RESPONSE:

4. The expense of removing the vinyl siding from the house at 2208 White Avenue is an estimate of $3,500.00 to $7,000.00, depending on "codes' requirements. This does not include the repair and/or replacement of the wooden siding that will be damaged or destroyed by removal of the

vinyl siding. The estimated cost of removing the vinyl siding and repairing and/or replacing the wooden siding on this house and restoring it to its original condition is in the range of $18,000.00 to $40,000.00. **[Affidavit of Margaret Hudson. Affidavit of James C. Broome.]**

RESPONSE:

5. Margaret Hudson is 82 years of age and a person of limited means. Compelling her to comply with design guidelines (that are void ab initio) will very likely force her to sell this property that she has owned since 1982. **[Affidavit of Margaret Hudson.]**

RESPONSE:

6. The Woodland-in-Waverly Historic Design Guidelines were adopted by the MHZC on November 25, 2985.[sic] **[Affidavit of Ann Roberts, Minutes of MHZC of 11/25/85.]**

RESPONSE:

7. Council Bill No. 085-1021 that created the Woodland-in-Waverly Historic Zoning District passed final reading by the Metropolitan Council on November 19, 1985. **[Affidavit of Margaret Hudson and Exhibit "G" thereto. Affidavit of Ann Roberts and Exhibits thereto.]**

RESPONSE:

8. Council Bill No. 085-1021 that created the Woodland-in-Waverly Historic Zoning District was signed into law by the Mayor of Metropolitan Government of Nashville and Davidson County on November 25, 1985. **[Affidavit of Margaret Hudson and Exhibit "G" thereto.]**

RESPONSE:

9. Neither Margaret Hudson, nor her husband James T. Hudson {now deceased} ever received actual notice of any meetings, public hearings, or proceedings related to the adoption of the Woodland-in-Waverly Historic Zoning District Design Guidelines adopted by the MHZC on November 25, 1985. **[Affidavit of Margaret Hudson.]**

RESPONSE:

10. Neither Margaret Hudson, nor her husband James T. Hudson {now deceased}, ever signed any petition to support the creation of the Woodland-in-Waverly Historic District, or any other historic district that included the property at 2208 White Avenue. The signature alleged to be that of Margaret Hudson, or even that of James T. Hudson, appearing on any such petition is a forgery. **[Affidavit of Margaret Hudson.]**

RESPONSE:

11. Margaret Hudson's property at 2208 White Avenue is within the "District B" section of the Woodland-in-Waverly Historic Zoning District. 45 houses, or more than 62% of the houses in "District B" of said Historic District, were not considered to be historic structures in 1985. **[Woodland-in-Waverly Historic District Design Guidelines Handbook, page 6.]**

RESPONSE:

12. Only 10 of the 85 houses, or less than 12% of the houses in the "District A" section of the, Woodlands-in-Waverly Historic Zoning District were not considered to be historic structures in 1985. **[Woodland-in-Waverly Historic District Design Guidelines Handbook, page 6.]**

RESPONSE:

13. Of the total of 72 houses in the "District B" Section of the Woodland-in-Waverly Historic Zoning District, 30 are considered post-1970 type brick duplex houses. Of the 42 remaining, 14 have vinyl or aluminum siding, 11 have asbestos shingle siding, and 1 has a mixed brick and shingle siding, all of which are not permitted under Section II. B. © (1) and (4) at page 22 of the Woodland-in-Waverly Historic Zoning District Guidelines Handbook. **[Affidavit of Wilma Settles.]**

RESPONSE:

Respectfully submitted,

/s/ Marbut Glenn Gaston, Jr.

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Attorneys for Defendant Margaret Hudson

[Certification of Service Omitted in Printing]

## APPENDIX F

## IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE,
Plaintiff,

MARGARET HUDSON,
Defendant.

**No. 98-406-I**

FILED 2002 SEP –4 PM 2:47
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

### *RESPONSE TO DEFENDANT'S STATEMENT OF ADDITIONAL DISPUTED AND UNDISPUTED FACTS*

Comes now Plaintiff, the Metropolitan Government of Nashville and Davidson County (Metropolitan Government) and files the following Responses to Defendant's Statement of Additional Facts.

1-6. Admitted Solely for the purposes of this summary judgment motion. Plaintiff asserts that these facts are not material to the legal issues in the lawsuit.

7-8. Admitted.

9-13 Admitted solely for the purposes of this summary judgment motion. Plaintiff asserts that these facts are not material to the legal issues in the lawsuit.

Respectfully submitted,

THE DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
KARL F. DEAN, #10419
DIRECTOR OF LAW

/s/ Margaret O. Darby
MARGARET O. DARBY, #20701
Metropolitan Attorney
204 Metropolitan Courthouse
Nashville, Tennessee 37201
(615) 862-6341

/s/ Lora Barkenbus
LORA BARKENBUS, #17243
Metropolitan Attorney
204 Metropolitan Courthouse
Nashville, Tennessee 37201
(615) 862-6341

[Certification of Service Omitted in Printing]

## APPENDIX G

## IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE,
Plaintiff,

vs.

MARGARET HUDSON AND HAROLD CAPITEL, D/B/A SOUTHERN ALUMINUM COMPANY,
Defendants,

**No. 98-406-I**

FILED 2002 NOV –7 PM 1:08
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

***Amended Answer and Counter Complaint***

Comes now Defendant Margaret Hudson and, pursuant to Rule 15 of the Tennessee Civil Procedure, respectfully submits this Amended Answer and Counter Complaint:

1. Paragraphs 1 through 13 averred in original Answer are hereby re-averred and are incorporated by reference herein.

2. Paragraphs 1 through 9 of the Affirmative. Defenses averred in the Answer are hereby re-averred and are incorporated by reference herein.

3. In addition to the Affirmative Defenses. previously averred, Defendant avers that the Woodland-in-Waverly Historic Zoning District Ordinance is null and void *ab initio* because it does not comply with

T.C.A. Section 13-7-405 requiring that review guidelines for the historic district be adopted before the creation of an historic zoning district.

4. In addition to the Affirmative Defenses previously averred, Defendant avers that the Design Guidelines for the Woodland-in-Waverly Historic District are null and void *ab initio* because they were not adopted prior to the creation of the Woodland-in-Waverly Historic Zoning District by the Metropolitan Council as required by T.C.A. Section 7-13-406.

5. Paragraphs 1 through 4 averred in Defendants Counter Complaint are hereby re-averred and incorporated by reference herein.

6. In addition to the claims previously averred in the Counter Complaint, Defendant avers that the actions of the Metropolitan Council in passing Council Bill No. 085-1021 that established the Woodland-in-Waverly Historic Zoning District and the actions of the Metropolitan Historic Zoning Commission in adopting Design Guidelines for the Woodland-in-Waverly Historic Zoning District are in violation of T.C.A. Section 13-7-406 and are therefore *ultra vires*.

7. The Woodland-in-Waverly Historic Zoning District and the Design Guidelines for the Historic Zoning District are therefore null and void *ab initio*. The enforcement of any restrictions against Defendant's property at 2208 White Avenue resulting from this historic zoning classification and/or the Design Guidelines constitutes a deprivation of Defendant's civil rights to procedural due process, under color of law, guaranteed under the Due Process Clause of the 14th Amendment of the U.S. Constitution and

gives rise to a cause of action under 42 USC Section 1983.

***Prayer for Relief***

Wherefore, having fully Answered and Counter Claimed, Defendant prays that the Complaint against her be dismissed with costs and Defendant's Attorney's fees taxed against Plaintiff.

Respectfully submitted,

/s/ Marbut Glenn Gaston, Jr.
Marbut Glenn Gaston, Jr. Esq. (#3143)
2211 Crestmoor Road
Nashville, TN 37215-2020
(615) 385-2804

/s/ Joseph H. Johnston
Joseph H. Johnston, Esq. (#4706)
P.O. Box 120874
Nashville, TN 37212
(615) 383-2119

Attorneys for Defendant Margaret Hudson

## APPENDIX H

## IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE,
Plaintiff,

MARGARET HUDSON AND HAROLD CAPITEL, D/B/A SOUTHERN ALUMINUM COMPANY,
Defendants,

**No. 98-406-I**

FILED 2000 DEC 13 PM 1:25
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

***ANSWER OF MARGARET HUDSON***

Comes now Margaret Hudson and for her Answer would state as follows:

1. She admits the allegations of paragraph 1.
2. She admits the allegations of paragraph 2.
3. The allegations of paragraph 3 do not apply to this Defendant, and if it effects her she neither admits nor denies the allegations but demands strict proof thereof.
4. She denies the allegations of paragraph 4.
5. She denies the allegations of paragraph 5. Furthermore, Exhibits A and B were not attached to the Complaint served on this Defendant.

6. The allegations of paragraph 6 {with reference to The Tennessee Code, the Old Zoning Ordinance, and the New Zoning Ordinance} amount to a statement of law and does not require a response.

7. She denies the allegations of paragraph 7. Furthermore, there were no attachments to the Complaint served on this Defendant.

8. She denies the allegations of paragraph 8.

9. She admits the allegations of the first sentence of paragraph 9. She neither admits nor denies the allegations of the second sentence of paragraph 9 as she has insufficient knowledge in which to respond and demands strict proof thereof. She denies the allegations of the third and last sentence of paragraph 9.

10. She denies the allegations of paragraph 10.

11. She denies the allegations of paragraph 11.

12. The allegations of paragraph 12 {with reference to The Metropolitan Code of Laws, the Old Zoning Ordinance, and the New Zoning Ordinance} amount to a statement of law and does not require a response. She denies the allegations of paragraph 12 that she is subject to injunctive relief.

13. Any allegations not herein specifically admitted or denied are now herein denied.

***AFFIRMATIVE DEFENSES***

1. Affirmatively, this Defendant would state that the Plaintiff has failed to state a claim or cause of action against this Defendant for the relief being sought.

2. Affirmatively, this Defendant would state that the doctrine of laches and estoppel apply to any relief being sought by the Plaintiff against this Defendant.

3. Affirmatively, the Design Guidelines for the Woodland in Waverly Historic District are void and unenforceable in that they were never adopted and approved by the Metropolitan Council of Nashville and Davidson County, Tennessee.

4. Affirmatively, the Design Guidelines for the Woodland in Waverly Historic District are voidable and unenforceable in that they are unconstitutionally vague.

5. Affirmatively, the Design Guidelines for the Woodland in Waverly Historic District are voidable and unenforceable and unconstitutional in that they have been selectively enforced.

6. Affirmatively, the Zoning Ordinance that provides for the Historic District classification for this Defendant's property is void and unenforceable in that it exceeds and subverts the intent of the legislative body promulgating this Ordinance.

7. Affirmatively, the Zoning Ordinance that provides for the Historic District classification for this Defendant's property has been adopted by the Plaintiff without actual written notice to this Defendant as required by law. The adoption of said Ordinance and the subsequent attempted enforcement thereof against this Defendant's property constitutes a violation of her due process rights guaranteed under Article I, Section 8, of The Tennessee Constitution and the 14th Amendment of The United States Constitution.

8. Affirmatively, the Zoning Ordinance which provides for the Historic District classification for this Defendant's property and the subsequent attempted enforcement thereof against this Defendant's property constitutes an unconstitutional taking without compensation in violation of Article I, Section 21 of The Tennessee Constitution and constitutes the taking of private property for public use without just compensation in violation of the 5th and 14th Amendments of The United States Constitution.

9. Affirmatively, this Defendant's property is not subject to any restrictions under this Historic District Ordinance(s) or Guidelines.

**WHEREFORE, DEFENDANT MARGARET HUDSON** having fully Answered, prays further that this case be dismissed against her with costs taxed to the Plaintiff

## COUNTER-COMPLAINT

Comes now this Defendant, Margaret Hudson, and assuming the position of Counter-Plaintiff against the Counter-Defendant, Metropolitan Government of Nashville and Davidson County, to wit:

1. Counter-Plaintiff is a citizen and resident of Davidson County, Tennessee, and at all times material to this cause, was the owner of real property located at 2208 White Avenue, Nashville, Davidson County, Tennessee.

2. Counter-Defendant, Metropolitan Government of Nashville and Davidson County, Tennessee, is the governmental body with jurisdiction over citizens residing in Davidson County and over real property located within its Political Boundaries Chartered under State law, Counter Defendant.

3. Counter-Plaintiff states that she never received guidelines establishing the restrictive nature of the Historic District in question. The Counter-Defendant, acting under color of law deprived Counter-Plaintiff of her civil rights guaranteed under the 5th and 14th Amendments to The Constitution of the United States and in violation of 42 USC Section 1983; and the actions of the Counter-Defendant amounts to a taking of Counter-Plaintiff's property without just compensation as required by the 14th Amendment of The Constitution of The United States, and Article I, Section 8, of The Tennessee Constitution, and Article I, Section 21, of The Tennessee Constitution.

4. Counter-Plaintiff states that she was never aware that there were restrictions placed on her property that prohibited any restoration or improvement of the exterior of her property, including, but not limited to, vinyl siding. Vinyl siding is the most economical and effective way to maintain the exterior of her property, especially in light of its limited economic value.

**WHEREFORE, COUNTER-PLAINTIFF MARGARET HUDSON**, prays that this Court:

1. Dismiss the original complaint filed against her; and,

2. Award her damages in the amount of $50,000.00; and,

3. Award her attorneys' fees and costs and expenses pursuant to 42 USC Section 1988; and,

4. Grant her injunctive relief to enjoin Plaintiff from imposing, enforcing, and/or attempting to enforce

any of the guidelines of this Historical District upon her property.

5. And such general relief as the Court deems proper.

Respectfully submitted,

/s/ Marbut G. Gaston Jr.
MARBUT GLENN GASTON, JR. {#3143}
Attorney for Margaret Hudson
2211 Crestmoor Road
Nashville, TN 37215
(615) 385-2804

[Certification of Service Omitted in Printing]

## APPENDIX I

## IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE,
Plaintiff,

vs.

MARGARET HUDSON AND HAROLD CAPITEL, D/B/A SOUTHERN ALUMINUM COMPANY,
Defendants.

**No. 98-406-I**

FILED 2001 JAN 18 PM 3:59
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

### *ANSWER TO COUNTER-COMPLAINT OF MARGARET HUDSON*

Comes now The Metropolitan Government of Nashville and Davidson County and answers the Counter Complaint filed against it by defendant Margaret Hudson:

1. Admitted.
2. Admitted.
3. Denied.
4. Denied.

Any and all allegations contained in Counter-Plaintiff Margaret Hudson's Counter-Complaint not heretofore admitted or denied, are hereby denied the same as if specifically done.

Now having fully answered the Counter-Complaint filed by Margaret Hudson, Counter-Defendant Metropolitan Government prays that said Counter-Complaint be dismissed, that the prayer for damages set forth therein be denied, and that all costs of this cause be taxed to the Counter-Plaintiff Hudson.

Respectfully submitted,

/s/David Diaz-Barriga
David Diaz-Barriga, #17951
Metropolitan Attorney

/s/ Lora A. Barkenbus
Lora A. Barkenbus, #17243
Metropolitan Attorney
204 Metropolitan Courthouse
Nashville, TN 37201
(615) 862-6341

## APPENDIX J

## IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE,
Plaintiff,

MARGARET HUDSON
Defendant.

**No. 98-406-I**

FILED 2002 JUN 19 PM 12:14
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

### *MOTION FOR SUMMARY JUDGMENT*

COMES now defendant, Metropolitan Government of Nashville and Davidson County, (hereinafter "Metropolitan Government"), and pursuant to Rule 56 of the Tennessee Rules of Civil Procedure hereby moves this Court to grant summary judgment in its favor. For grounds, the Metropolitan Government will show that there are no disputed material facts and judgment should be awarded to the Metropolitan Government as a matter of law.

In support of this motion, plaintiff files the attached memorandum of law, statement of undisputed facts, and affidavits of Tim Walker and Ann Roberts with attachments.

Respectfully submitted,

THE DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
KARL F. DEAN, #10419
DIRECTOR OF LAW

/s/ Margaret O. Darby
MARGARET O. DARBY, #20701
Metropolitan Attorney
204 Metropolitan Courthouse
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/s/ Lora A. Barkenbus
LORA A. BARKENBUS, #17243
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[Certification of Service Omitted in Printing]

## APPENDIX K

## IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE,
Plaintiff,

vs.

MARGARET HUDSON AND HAROLD CAPITEL, D/B/A SOUTHERN ALUMINUM COMPANY,
Defendants,

**No. 98-406-I**

FILED 2002 OCT 11 PM 1:03
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

***Defendant's Motion To Alter or Amend The Summary Judgment Order***

COMES now defendant, Margaret Hudson and, pursuant to Rule 59 of the Tennessee Rules of Civil Procedure, hereby respectfully moves the Court for an Order to Alter or Amend the Summary Judgment Order entered in favor of Plaintiff, Metropolitan Government, on September 18, 2002.

Grounds for this Motion are as follows:

1. Defendant moved to file an Amended Complaint prior to its argument on the Summary Judgment in which she challenged the constitutionality of the Woodland in Waverly Historic Zoning District on the grounds that ir had not been properly enacted in compliance

with the enabling statute, Tennessee Code Annotated, Section 13-7-406; and, therefore was in violation of the Due Process Clause of the 14th Amendment.

2. Plaintiff's Counsel, in open court, stated there was no opposition to the Motion to Amend and that the Motion for Summary Judgment could proceed based on the pleadings as amended.

3. The Order entered on September 18, 2002, which granted Plaintiff's Motion for Summary Judgment did not specifically address Defendant's Counterclaims.

4. Defendant wishes to appeal the Summary Judgment based upon her constitutional defenses and counterclaims. However, in order to raise these issues on appeal, they must be addressed by the Trial Court and disposed of in its final Order.

Wherefore, premises considered, Defendant prays that her Motion to Alter or Amend be granted and that the Court specifically address her constitutional defenses and counterclaims in its final Order.

Respectfully submitted,

/s/ Marbut Glenn Gaston, Jr.
Marbut Glenn Gaston, Jr. (#3143)
2211 Crestmoor Road
Nashville. TN 37215-2020
(615) 385-2804

/s/ Joseph H. Johnston
Joseph H. Johnston, (#4706)
P.O. Box 120874
Nashville. TN 37212
(615) 383-2119

Attorneys for Defendant Margaret Hudson

[Certification of Service Omitted in Printing]

THIS MOTION IS EXPECTED TO BE HEARD ON **FRIDAY, NOVEMBER 1, 2002, AT 9:00 A.M.** OR AS SOON THEREAFTER AS POSSIBLE. FAILURE TO FILE A TIMELY WRITTEN RESPONSE TO THIS MOTION MAY RESULT IN THE SAME BEING GRANTED WITHOUT FURTHER HEARING BY THE COURT.

## APPENDIX L

## IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE,
Plaintiff,

vs.

MARGARET HUDSON AND HAROLD CAPITEL, D/B/A SOUTHERN ALUMINUM COMPANY,
Defendants,

**No. 98-406-I**

FILED 2002 NOV 14 PM 2:51
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

### *NOTICE OF APPEAL*

Comes now defendant, Margaret Hudson, and pursuant to Rules 4 and 5 of the Tennessee Rules of Appellate Procedure, hereby gives Notice of Appeal from the Final Order entered in this cause on November 7, 2002, granting Summary Judgment in favor of Plaintiff Metropolitan Government; dismissing her federal counterclaims, including claims brought pursuant to 42 USC § 1983; and, Ordering that Defendant remove vinyl siding from her home found to be in violation of the guidelines for the Woodland in Waverly Historic Zoning District.

Respectfully submitted,

/s/ Joseph H. Johnston
Joseph H. Johnston, (#4706)
P.O. Box 120874
Nashville. TN 37212
(615) 383-2119

/s/ Marbut Glenn Gaston, Jr.
Marbut Glenn Gaston, Jr. (#3143)
2211 Crestmoor Road
Nashville. TN 37215
(615) 385-2804

Attorneys for Defendant

[Certification of Service Omitted in Printing]

## APPENDIX M

## IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE,
Plaintiff,

vs.

MARGARET HUDSON AND HAROLD CAPITEL, D/B/A SOUTHERN ALUMINUM COMPANY,
Defendants,

**No. 98-406-I**

FILED 2002 SEP -3 PM 2:29
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.

***AFFIDAVIT of MARGARET HUDSON***

***In Opposition to Motion for Summary Judgment***

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Margaret Hudson, having first been duly sworn, deposes and says:

1. I was born November 26, 1920. I was married to James T. Hudson for over 50-years {before his death on February 26, 1998}, and we had 8-children {one of whom is a mentally-challenged adult who still lives with me and another adult child lives with me who has a terminal illness}, and several grandchildren and great-grandchildren. Mr. Hudson worked for the L&N Railroad

until he retired in the early 1980's. I worked for Ruth Randolph from 1956 until 2001. I have lived at 1014 Lawrence Avenue since 1966, and my home is about is about 15-blocks west of 2208 White Avenue property, which is the subject of this lawsuit.

2. My her late husband and I purchased the 2208 White Avenue property June 17, 1982, for $14,770.00, with Ruth Randolph acting our real estate agent. I asked Mrs. Randolph to help my husband and me invest our savings, and Mrs. Randolph financed the purchase money balance for us on this property. We bought this home as an investment, and have invested considerable sums in renovations to it, not only at its purchase but over the years as well. However, we did not rent it. We allowed one of our adult daughte.s, Wilma Settles, to live there. Appreciation in value to provide retirement income was our investment objective.

3. I am now advised by my lawyer that in 1980, the Woodland-in-Waverly National Register Historic District {hereinafter "District-A"} was established. It consisted of 92-properties, located on Roycroft Place, Benton Avenue, Ridley Boulevard, Grantland Avenue, and 9-homes on the north end of White Avenue. The area was bounded in general by Wedgewood Avenue to the north, by Franklin Pike to the West, by Bradford Avenue to the south, and by the remaining homes on White Avenue and those on Lindell Avenue, with I-65, to the east {hereinafter "District-B"}. **See National Register Map on page 5, Woodland-in-Waverly Handbook and Design Guideline, Exhibit "C" to Plaintiff's original Complaint, and attached as Exhibit "A".** In 1980, 2208 White Avenue, the property subject to this lawsuit, was not a part of this Historic Register District.

4. Since the filing of this lawsuit against me, I have learned that the Woodland-in-Waverly Historic District was created in 1985. Basically, the 72-homes in "District B" were included with the 85 homes in "District A" homes {the earlier 92-National Register properties reduced by 7-parcels when the Historic District was formed} to form this Historic District. However, in "District B" only 27-homes [or 38%] are historic and 45-homes [or 62%) are non-historic; where as, in "District A" 75-homes [or 88%] are historic and only 10-homes [12%] are non-historic. **See District Map on page 6, Woodland-in-Waverly Handbook and Design Guideline, Exhibit "C" to Plaintiff's original Complaint, highlighted for ease of identification and sectioned to indicate original Historic Register District {District "A" as noted herein} and attached to Exhibit "B".** According to my lawyer, this disparity in 'historic' to 'non-historic' ratios within the two areas suggests that the annexation of "District B" was merely an effort to create a buffer between the "District A" homes and I-65 by using {and restricting, limiting, and encumbering} those homes in "District B", including my property at 2208 White Avenue.

5. A detailed examination of tax appraised values, and more specifically, real estate sales comparables, provided by my lawyer, reveals an even more alarming disparity between the home values of these two 'areas', and evidence to support the theory that "District B" was created as a buffer for the more valuable properties in "District A".

**Values compiled by my lawyer, Marbut Glenn Gaston, Jr., in 1999 are as follows:**

| 1985 Added Area "District B" | | 1980 Historic Register "District A" | Variance |
|---|---|---|---|
| | **1999 Tax Appraised Value** {average} | | |
| $70,080 | *Historic Homes* | $99,068 | +140% |
| $72,910 | Non-Historic Homes | $74,380 | negligible |
| | **1999 Specific Sales** {High-Low average} | | |
| $52,400 [$71,000 & $34,600] | *Historic Homes* | $187,080 [$350,000 & $99,000] | +357% |
| $56,527 | All Home Sales | $173,658 | +307% |
| $57,577 | Non-Historic Homes | $59,500 | negligible |

50a

| | | | |
|---|---|---|---|
| | **1985 Tax Appraised Value** {High-Low average} | | |
| $25,981 [$36,500 & 15,100] | All Homes | $35,945 [$105,000 & 15,700] | +138% |
| | **1985-1986 Sales Transactions** {High-Low average} | | |
| $29,958 | All Home Sales | $51,880 | +173% |
| [$39,916 & $20,000] | Sales Price | [$59,500 & $41,200] | |
| [$33,100 & $28,000] | Metro Tax Appraised Value | [$23,100 & $29,400] | |

51a

6. Contrary to paragraph 6 of Ann Roberts Affidavit, I never signed a petition in favor of creating an historic district. I have seen a petition with the name "M/M J.T. Hudson" on it, but that is definitely not my husband's signature either. My husband did not sign his name with only his initials {"J.T."} but always first name and middle initial {"James T."}. I have attached a copy of the applicable signature page from this petition together with a copy of my husband's notarized signature on the front page of our purchase deed for the Court to review. **See both attached as collective Exhibit "C" hereto.**

7. My husband and I never received any mailings from Metro Government, or anyone else, with specifics about the formation of a Historic District at this property, or the adoption of Historic Zoning District Design Guidelines. Further, we never received any information about the restrictions and/or guidelines that would apply to our property. Only after I received notice of the violation of Design Guidelines was I provided a copy of the Historic District Design Guidelines. My husband and I would never have supported such costly and restrictive improvement measures in 1985 or today either.

8. My husband and I never attended any meetings regarding the formation of this Historic District, nor did we receive any mailings about such meetings. The mailing address for 2208 White Avenue with the Metro Property Assessor and Metro Trustee for the payment of taxes is clearly listed as 1014 Lawrence Avenue, Nashville, TN 37204 and not this property address.

9. I never received any Woodland-in-Waverly Newsletters, or any information about a neighborhood association, or any meetings of the same, until after this issue of non-compliance came up in 1997. I never saw a Historic

District sign on White Avenue, until after this issue of non-compliance came up in 1997.

10. During the past 20-years, I have done repeated maintenance to the home, including re-roofing and painting the exterior at least twice. In fact, the cost of repeated re-painting of wood siding was the primary factor in my decision to install the vinyl siding on this house. Nothing in my management of this property, or contact with persons in the neighborhood, led me to believe I was restricted or prohibited in any manner whatsoever in the way I took care of this house.

11. In summary, I had absolutely no idea that my house at 2208 White Avenue was in fact a restricted-historic-home within this "Historic District", and I would never have supported any zoning change for this "Historic District" had I known the restrictions and prohibitions being placed on a $14,770.00 home.

12. In late May or early June of 1996, I hired Mr. Harold Capitel, d/b/a Southern Aluminum Company, to install siding on this home, at a cost of $7,000.00. His company was doing siding jobs on various homes in my Lawrence Avenue neighborhood, and I asked him to give me a bid on installing vinyl siding on 2208 White Avenue. The improvement cost was almost 15% of the home's Metro Tax Appraised value at that time of $45,200. I did not know a permit was needed for this work since I was not a contractor. I never had to get a permit when I had the house painted several times before. I simply thought I had made a reasonable maintenance-free investment improvement to a house I had owned for almost 15-years, at a time when I was nearing retirement and a time when I was in failing health. I was concerned about my investment and its maximum opportunity to provide income to me in my declining years.

13. The job took several days, and while I am not exactly sure how long, it could have been at least a week. At no time during this EXTERIOR construction project did anyone inquire about the siding installation.. No neighbors called me; none of the Woodland-in-Waverly Neighborhood Association members called me; and no Codes or Zoning officials called me. I paid my money for a job I thought was well done, and I gave it no further thought other than of an investment well made.

14. In late December of 1996 or early January of 1997, *seven months after this vinyl siding had been installed*, I was notified to appear before the Metro Historic Zoning Commission to answer its complaint against me for installing siding on this house.

15. To suggest that no one noticed the installation of this vinyl siding at 2208 White Avenue would be preposterous. The fact is, people in the neighborhood noticed what was going on, and didn't think anything about it. It made the neighborhood look better. In fact, the then President of the Woodlands-in-Waverly Association, Christopher Cantanzaro, said, "it really is one of the better looking properties on the block now." **See TENNESSEAN article, Sunday, February 16, 1997, attached hereto as Exhibit "D"**. I know there are other houses on White Avenue and Lindell Avenue that have siding installed on them. In fact, subsequent to this incident, a house at 2223 Lindell Avenue had a portion of siding installed on the side of the house before that work was stopped in process. **See photograph attached as Exhibit "E".** However, the vinyl siding on that property was never removed. The siding on my house at 2208 White Avenue is complete in every detail. **See photographs attached Exhibit "F".**

16. The delay in filing the Complaint against me has been compounded by the fact that more than 5-years have

lapsed with the Complaint being dismissed for failure to prosecute on several different occasions. The cost of compliance has increased dramatically because of inflation over the period of time, which compounds the economic hardship on me. According to the Affidavit of James C. Broome, a general contractor, the cost of removing the vinyl and restoring the wood underneath the vinyl could range from $18,000.00 to $40,000.00. This is on a house that my husband and I only paid $14,770.83 to acquire.

17. Without actual written notice that my house was to be subject to these restrictions after the Historic District had been created by the Metro Council, it is fundamentally unfair to apply these standards long after the work has been done and I have spent my $7,000.00. According to the Historic District Map, my house is surrounded on all sides by non-historic buildings. In fact, according to the Affidavit of Wilma Settles, my daughter, there are 9 other houses on my street, White Avenue, with vinyl or aluminum siding on them.

18. I have been advise by my lawyer that the restrictive guidelines that were promulgated pursuant to this Zoning Ordinance, were never adopted by the Metropolitan Historic Zoning Commission prior to the creation of the Woodland-in-Waverly Historic District by the Metropolitan Council, as required under State Law, TCA Section 13-7-406. Contrary to the Affidavit of Ann Roberts, the Council Bill No. 085-1021 was passed by the Metropolitan Council on Third Reading on November 19, 1995. The Council never saw these Design Guidelines because they were not adopted by the Metropolitan Historic Zoning Commission until after that date; on November 25, 1985. The Mayor signed this bill on November 25, 1985. **See copy of Ordinance No. 085-1021 and Minutes of November 25, 1985 meeting of MHZC attached hereto as Collective Exhibit "G".**

19. According to the Woodland-in-Waverly Historic Zoning Overlay Map, there are 72 houses in "District B", the district added to the original Historic Register area. Of these, 28 are designated historic. According to the Affidavit of my daughter, Wilma Settles, 22 of these 28 'historic' houses have siding. Of the 44 'non-historic' houses, 30 are post-1970 type brick duplex houses, and of the remaining 14 'non-historic' houses, 4 of those have siding.

**FURTHER AFFIANT SAITH NOT**. Witness my hand on September 3, 2002.

/s/ Margaret Hudson
Margaret Hudson

Sworn to and subscribed before me on September 3, 2002.

/s/ Ray Randolph
Notary Public

My commission expires: *10/25/03*

**[EXHIBITS OMITTED IN PRINTING]**